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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,549	11/07/2001	Glen S. Axelrod	TFH 01.03	1300
	7590 10/03/2003			
Steven J. Grossman Grossman, Tucker, Perreault & Pfleger, PLLC 55 South Commercial Street Manchester, NH 03101			EXAMINER MADSEN, ROBERT A	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 10/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

10/039,549

Applicant(s)

AXELROD, GLEN S.

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 1,4-6,9-12,15-18 and 20-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,3,7,8,13,14,19 and 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Applicant's election of species of a bacon shape/flavor and rawhide base (i.e. claims 2,3,7,8,13,14,19,26 with claims 7,13,19 being generic) in the response filed August 21, 2003 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 2,3,7,8,13, 14, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Google Groups <sup>TM</sup> as evidenced by Epinions.com

4. Google Groups <sup>TM</sup> teach Beggin' Strips bacon flavored dog food treats (See posting from rec.pets.dogs.breeds 2000/08/07), which as evidenced by Epinions.com have a bacon flavor, odor, light and dark strips, and successive bends, as recited in claims 2,3,7,8,13, 14,19 (See pages 1 and 2 of the Epinions.com print out).

5. Claims 2,3,7,8,13,14, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Cooper et al. (US 3589914).

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6. Cooper et al. teach simulated bacon that can be ingested by an animal with bacon flavor, odor, light and dark strips, and successive bends, as recited in claims 2,3,7,8,13, 14, and 19 (Figure 4 in light of Column 1, lines 23-30; Column 2, lines 3-7, Column 2, lines 45-51, column 3, lines 60-65, Example 4).

7. Claims 2,3,7,8,13,14, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Koller (US 6060100).

8. Koller teach dog chew toys that are ingestible, have the shape of bacon, and contain bacon flavors, and thus has a bacon scent, as recited in claims 7,8 13,14,19 (Abstract, Column 1, lines 5-9, column 2, lines 15-64, Column 3, lines 11-19).

9. Claims 7,13, 19,2 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Greenberg et al. (US 5635237).

10. Greenberg et al. teach a rawhide based pet chew toy that comprises meat flavor so that the chew toy takes on the flavor, and Greenberg et al. teach extruding the mixture into a shape such as round bones, which would have a meat flavor (Abstract, Column 8, lines 8-18,55-66).

11. Claims 7,13, 19, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Sherrill (US 5673653)

12. Sherrill teaches a rawhide based, bone-shaped, pet chew toy that comprises a meat jerky so that the chew toy takes on the flavor of jerky, which would be a flavor

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associated with a bone (Abstract, column 2, lines 24-27 column 3, lines 1-22, column 4, lines 10-24, Figure 2).


### **Conclusion**


13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Superior Pet Products (GB 122049) teach bone shaped rawhide pet toys. Perlberg et al. (US 6223693) teach scented and flavored rawhide pet chew toys. Sherrill et al. (US 6584938 B2) teach bacon mixed with rawhide for a chew toy. Sienkiewicz et al. (US 4449906), Roth (US 4446159), Robinson (US 3442662) and Wisdom (US3851075) teach simulated bacon products.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

16. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

  
MILTON I. CANO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700

Robert Madsen   
Examiner  
Art Unit 1761